IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2963 OF 2007

Shankar Laxman Padwalkar ...Petitioner

vs.

Dr.(Mrs.)Neena Ajit Pandit & Anr. ...Respondents

Mr.Neel Helekar for the Petitioner
Mr.S.B.Shetye i/b Ms Smita Gaidhani for the Respondent No.1.

CORAM: A.S.OKA,J.
DATE : JUNE 27, 2007.

P.C.:

1. Heard learned Advocate for the Petitioner and the learned Advocate for the first Respondent. In execution of the order of maintenance passed in favour of the first Respondent against the second Respondent, a flat held by the second Respondent was put to auction. The highest bid submitted by the Petitioner in the sum of Rs.12,80,000/- was accepted on 25th January 2007. As per the proclamation of the sale, 25% of the amount of bid was to be deposited by the Petitioner and the same was deposited by the Petitioner on the very same day. Balance amount was to be deposited within a period of 15 days from the date of acceptance of the bid.

2. The Petitioner deposited 25% of the amount i.e. Rs.3,20,000/- on the very same day. On the date of the acceptance of the bid, the Petitioner applied for grant of time of one month to deposit the balance amount. According to

the Petitioner, during the pendency of the said Application,

on 14th February 2007, another application was made for grant of a further period of 15 days to deposit the balance amount. The said Application has been rejected by passing the following order which is impugned in this Writ Petition:

. "No time can be granted further."

3. The learned Advocate for the Petitioner submitted that the provisions of Family Court Act,1984 are having an overriding effect over the other statutes including the Code of Civil Procedure, 1908. He also submitted that the applications made by the Petitioner should have been considered in the light of Maharashtra Amendment to the Rule 85 of Order XXI of the said Code which was brought into force with effect from 1st October 1983. No reasons have been assigned by the learned Trial Judge for not granting extension. The learned Counsel for the first Respondent submitted that the second Respondent has committed a gross default and the first Respondent is deprived of maintenance. He submitted that he has no objection if a reasonable extension is granted as the first Respondent is likely to get her dues if sale proceeds are deposited in the Court.

4. No reasons have been assigned by the learned Trial Judge

for not granting the prayer made by the Petitioner in the Application dated 14th February 2007. It is true that the Petitioner will have to satisfy the Trial Court that there is a power vesting in the Trial Court to extend the time beyond the period of 15 days from the date of acceptance of the bid. The order impugned shows that the trial Court has not considered the case made out by the Petitioner on merits. The trial court will have to consider the relevant provisions of law and will have to decide the application by passing a reasoned order.

5. Hence, I pass the following order :

i) Impugned order passed by the learned Trial Judge on application dated 14th February 2007 is quashed and set aside. The trial court will hear the Petitioner and will pass an appropriate order on the application dated 14th February 2007 within a period of two weeks from the date on which an authenticated copy of this order is produced. The trial court will record the reasons.

ii) If the Trial court is of the view that the extension of time cannot be granted, the Trial Court will ensure that the re-auction of the flat in question is held as expeditiously as possible.

iii) All contentions of the parties on merits are expressly kept open.

JUDGE